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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 31 2008

MSC 06 084 11195

IN RE: Applicant: [redacted]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.,* CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.,* CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant reasserts the applicant's claim and states that Citizenship and Immigration Services' (CIS') expectations regarding document production are unfair and contrary to the settlement agreements.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca,* 480 U.S. 421, 431 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the record shows that the applicant failed to meet this burden. In No. 30 of the Form I-687, the applicant indicated that he has resided at his current address since February 1981, the month and year of his claimed unlawful entry into the United States. However, in a Form G-325, which the applicant submitted in 2001 along with his application for permanent resident status filed under the **Legal Immigration Family Equity (LIFE) Act,** the applicant indicated that he resided at [redacted] from February 1981 through 2001 when the form was filed. In a separate submission, i.e., an address change card signed by the applicant, the applicant indicated that he lived at [redacted] until May 2005, when he notified CIS of his change of address. Additionally, the record contains the Form I-687 completed by the applicant in November 1991. In No. 33 of that application, the applicant stated that from February 1981 to October 1985 he resided at [redacted] and that he subsequently moved to where he claimed to have resided from October 1985 through the date the application was completed. Thus, there are at least three documents on record that are inconsistent with information provided by the applicant in the most recently filed Form I-687. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant resubmitted an affidavit dated November 19, 1991 from [redacted] who claimed that he was friends with the applicant during the statutory period and restated the applicant's residential addresses as they appeared in the first Form I-687, this document does not reconcile an inconsistency created by the applicant himself. It is noted that doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

In No. 33 of the most recent Form I-687, the applicant stated that he has been self employed since coming to the United States in February 1981. He provided no wages, no address, and no specified occupation.

However, in the previously filed Form I-687 (No. 36), the applicant indicated that he was a cutter in the garment industry. He identified two different employers—one employer from February 1984 to September 1988 and another employer from September 1988 through the date the application was completed. The applicant did not provide any employment information prior to February 1984.

On March 17, 2006, the director issued a notice of intent to deny the application. The director noted that the single affidavit from was deficient and was not sufficient to establish the applicant's eligibility for temporary resident status. In response, counsel for the applicant provided a letter dated April 13, 2006 in which he reasserted the applicant's claim. Although counsel claimed that the applicant had obtained additional affidavits from affiants willing to attest to the applicant's residence, the record contains only one additional affidavit from [redacted]. In his latest affidavit, dated April 4, 2006, Mr. stated that he has known of the applicant's residence in the United States since January 1, 1981. The AAO notes that this information is inconsistent with this affiant's prior statement where he only claimed to have known the applicant since February 1981. The affiant's latest statement is also inconsistent with the applicant's claim that he has resided in the United States since February 1981, not January 1981 as stated in the affiant's 2006 affidavit. Further, the affiant's statement is lacking in content in that the affiant failed to provide any details that would lend credibility to an alleged 25-year relationship with the applicant; nor did the affiant include his own address and telephone number so that he may be contacted to verify the information he provided in his affidavit.

Accordingly, on May 22, 2006, the director issued a decision denying the application. The director properly concluded that the applicant failed to provide sufficient evidence to support his claim. While counsel disputes the director's findings on appeal, asserting that the director's decision is contrary to the Act and the settlement agreement provisions, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the record clearly establishes that the applicant has provided inconsistent information. The applicant's submission of two deficient and inconsistent affidavits, completed by the same affiant, only adds to the doubt that already exists with regard to the credibility of the applicant's claim. The affidavits from Mr. [redacted] do little in terms of overcoming other inconsistencies created by the applicant himself. Thus, aside from the lack of sufficiently detailed affidavits, the applicant's overall credibility has been compromised by the numerous anomalies cited above.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.